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SUMMARY RECORD OF THE 1124th MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.25 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 10 of the Covenant (continued)
(CCPR/C/42/CRP.3)

Paragraph 9

1. Mr. SADI proposed that a new sentence should be inserted in paragraph 7; it would read as follows: "Prisons and places of detention shall be free of any torture equipment, the availability of which shall constitute incriminating evidence that the State party engages in ill-treatment and torture of prisoners."
2. Mr. ANDO said that although he was sympathetic to the proposal, it would be more appropriate to include such a sentence in the General Comment on article 7, which had addressed the question of torture.
3. Mr. MAVROMMATIS agreed with Mr. Ando, adding that, were the Committee to decide to outlaw instruments of torture, a new Convention would be needed; obviously, that was beyond its mandate.
4. Mr. NDIAYE said that the greatest instrument of torture was the human hand, and the imagination of torturers was unfortunately unlimited, so that there was no point in enumerating their instruments.
5. Miss CHANET agreed that there was no need for such a text. Generally, torture was used to extract confessions from accused persons. In penitentiaries, ill-treatment was the real problem rather than torture.
6. Mr. SADI said that the world's prisons were full of sophisticated implements of torture and insisted that they could not be ignored. Obviously, torture could never be entirely eliminated, but its more obvious forms could be. He did not agree that there would be a need for a new Convention; if such equipment was present, then a violation would exist.
7. The exact placement of his text was of little concern; however, State penitentiaries should be free of implements of torture and the record should show that the Committee was not indifferent to the situation, which was a very serious one.
8. The CHAIRMAN read out the text of paragraph 11 of the General Comment on article 7 as follows: "It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment." He agreed that that was the proper context for Mr. Sadi's concern.

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9. Miss CHANET said that the treatment of prisoners should be considered in connection with the supervision of penitentiary establishments. There would be little point in drawing up a list of implements that should be banned, since any such list would inevitably be incomplete.

10. Mr. SADI said that his purpose was not to prevent torture but to make torture equipment unavailable, and he drew a parallel with gun control. States parties should not have such equipment in their prisons, for if it was there it would be used.

11. After a discussion in which the Chairman, Miss Chanet and Messrs. Sadi and Mavrommatis participated, Mr. ANDO suggested that a second sentence should be inserted in paragraph 11 of the General Comment on article 7. It would read as follows: "In this connection, States parties should see to it that places of detention do not contain equipment liable to be used for ill-treatment or torture."

12. The CHAIRMAN welcomed the suggestion; as Miss Chanet had pointed out, torture was usually inflicted on accused persons during temporary detention and not in prisons.

13. Mr. MAVROMMATIS also welcomed Mr. Ando's proposed text, but suggested that "liable to be used" should be replaced by "that may be used".

14. Miss CHANET agreed with the new proposal, but thought there was still room in the General Comment on article 10 for some mention of supervision as a way of preventing ill-treatment.

15. The CHAIRMAN said that the two were not mutually exclusive. He suggested that Mr. Ando's revised text on implements of torture should be inserted in the General Comment on article 7; Miss Chanet's suggestion - the precise wording of which had yet to be determined - for the prevention of torture through supervision of penitentiary establishments could be incorporated into the General Comment on article 10.

16. It was so decided.

17. Mr. EL-SHAFEI said that paragraph 9, as currently worded, implied that it was acceptable for States merely to bring the various applicable provisions to the attention of personnel with authority over detained persons. In fact it should emphasize the necessity for those provisions to form an integral part of their instruction and training.

18. It was not clear from the second sentence who was responsible for ensuring that arrested or detained persons had access to the information in question. If that duty was left to the prison authorities it might not always be performed. It was vital to ensure that detainees had the possibility of ascertaining whether the appropriate rules were being observed and of gaining legal redress if they were not and that States parties should inform the

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Committee of the access to such redress which was available to detainees. He believed, consequently, that the paragraph should be worded in a more emphatic manner.

19. Mr. MAVROMMATIS said that the paragraph should contain a reference to the obligation of States parties to adhere strictly to all applicable rules in the discharge of their duties.

20. The CHAIRMAN proposed that the paragraph should be reworded to read: "Furthermore, the Committee recalls that reports should mention whether the various applicable provisions form an integral part of the instruction and training of the personnel who have authority over detained persons, and whether they are strictly adhered to in the discharge of their duties." The second sentence was acceptable as it stood. Under the new numbering, the paragraph would become paragraph 7.

21. Paragraph 9, as orally amended, was adopted.

Paragraph 10

22. Mr. NDIAYE said that the paragraph was entirely superfluous and should be deleted.

23. Mr. ANDO disagreed, saying that the paragraph enlarged upon the structure of article 10 and should, therefore, be retained.

24. Miss CHANET, supported by Mr. EL-SHAFFI, said that the paragraph served merely as a transition between article 10, paragraph 1, and article 10, paragraphs 2 and 3, and that elements of the paragraph, in particular the first sentence, could be retained for the purposes of coherence.

25. The CHAIRMAN proposed that the second sentence should be deleted and the first sentence retained; under the new numbering it would become paragraph 8.

26. It was so decided.

Paragraph 11

27. Miss CHANET said that it was inconsistent with the Committee's practice to quote passages from the Covenant *in extenso* and she suggested, therefore, that it would be sufficient merely to refer to the provisions of article 10, paragraph 2.

28. Mr. WENNERGREN suggested adding the words, "in this context" to the second sentence and, in that same sentence, replacing the words "remains applicable" with the word "applies".

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29. The CHAIRMAN suggested that the wording of paragraph 4 of General Comment 9 (CCPR/C/21/Rev.1) could be adopted instead, as it appeared to meet members' concerns more adequately.

30. Mr. WENNERGREN agreed with the Chairman but suggested that the phrase "protected by the presumption of innocence" used in paragraph 4 should be replaced by "enjoying the right to be presumed innocent", in order to emphasize that such treatment was a privilege.

31. The CHAIRMAN proposed that the paragraph should, accordingly, be redrafted as follows: "Article 10, paragraph 2 (a), provides for the segregation of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent, as stated in Article 14, paragraph 2.

32. Miss CHANET pointed out that although it omitted the qualification concerning special circumstances, the text proposed by the Chairman was, in every other respect, a distinct improvement. Under criminal law, the difference between sentenced and unsentenced persons consisted not only in the presumption of innocence, but also in the different status which they were accorded.

33. The CHAIRMAN proposed that the first sentence of the paragraph should be redrafted in accordance with the wording he had suggested earlier and that the second sentence should remain unaltered. The paragraph would be renumbered as paragraph 9.

34. It was so decided.

Paragraph 12

35. Mr. SADI, referring to the first sentence of paragraph 12 (new paragraph 10), suggested replacing the words "wishes to have" with the word "requires", and adding the words "the operation of" before the words "the penitentiary system", to strengthen the text.

36. Mr. ANDO said, with regard to the last sentence of the paragraph, that the word "success" was too strong and that another term should be found to convey the efficacy of State assistance to prisoners after release.

37. Mr. WENNERGREN said that, although a penitentiary system necessarily involved punishment and exclusion from society, unavoidably exacting society's vengeance against the criminal, he disliked the word "retaliatory" in the second sentence. The sentence generally needed redrafting. Also, the aim of rehabilitation of prisoners put forward in the third sentence was not always attainable.

38. Mr. MAVROMMATIS said that the goal of imprisonment was indeed to exact retribution, not to retaliate, and that exclusion from society was a valid means.

39. Miss CHANET agreed that the word "retaliatory" was inappropriate, and that the text needed clarification. The concept of punishment as sanction should be retained, but the draft comment should make the point that punishment and exclusion from society could not be the essential aim of a penitentiary system. Most importantly, the reference to article 10, paragraph 3, of the Covenant must be maintained, since it was virtually the only normative text in international law establishing that reform and rehabilitation were the essential aim of a penitentiary system. The system itself had an obligation to make that its purpose, although the result could not necessarily be guaranteed in the case of each individual prisoner.

40. Mr. NDIAYE concurred with Miss Chanet that the two policies of retribution and rehabilitation must coexist and that the punitive aspect could not be the sole purpose of a penitentiary system.

41. Mr. SADI suggested adding at the end of the second sentence the clause "but must also endeavour to rehabilitate them in preparation for normal life after completion of their sentences".

42. Mr. WENNERGREN pointed out that rehabilitation was not always desirable, as in the case of persons who had been imprisoned because of conscientious objections or civil disobedience on a point of principle. Perhaps the term ", as appropriate," could be inserted in the third sentence after the word "rehabilitation".

43. The CHAIRMAN observed that the problem in such instances was that persons who should not be in prison had been legally detained.

44. Mr. MAVROMMATIS said that since the modern trend was not to imprison such people, it would be best to ignore that category of prisoners in the text.

45. Miss CHANET, supported by the CHAIRMAN, Mr. HERNDL and Mr. NDIAYE, said that to qualify the aim of rehabilitation by the term "as appropriate" could weaken the Covenant and provide a loophole for any State wishing to use that argument as an excuse.

46. Mr. Sadi's concern could perhaps be addressed by combining the second and third sentences of the paragraph in a way that would balance the expression of the negative aspects of the penitentiary system with the positive aspects enunciated in article 10, paragraph 3, of the Covenant. Accordingly, she proposed that the sentence should be redrafted as follows:

"No penitentiary system should be exclusively punitive or have as its sole purpose the exclusion of the convicted person from society; it should essentially seek the reform and social rehabilitation of the prisoner."

47. Mr. NDIAYE, Mr. MAVROMMATIS and the CHAIRMAN supported her proposal.
48. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt paragraph 12, as amended by Miss Chanet.
49. It was so decided.

Paragraph 13

50. Mr. ANDO suggested that the word "re-education" should be replaced by "education".
51. Paragraph 13, as amended, was adopted.

Paragraph 14

52. Mr. ANDO asked what the reference to categorizing convicted persons meant.
53. Miss CHANET said that the concept was present in many legal instruments relating to the penitentiary system, and referred to the progression followed by the convicted person during the period of detention. In general terms the concept embraced vertical classification, meaning that a prisoner could demonstrate progress in terms of rehabilitation, possibly leading to conditional release, and horizontal classification, whereby, for example, different categories of prisoners would be kept apart. She suggested that the words "medical services" should be added to the enumeration of contacts with the outside world given in brackets at the end of the paragraph.
54. Paragraph 14, as amended, was adopted.

Paragraph 15

55. Mr. MULLERSON said that the reference to "treatment appropriate to their age", which had been taken directly from article 10, paragraph 3, of the Covenant, needed clarification, perhaps by the addition of a list of examples indicating what constituted treatment appropriate to the age of juvenile offenders.
56. Mr. MAVROMMATIS agreed that the paragraph was not explicit enough, and required amendment. Further, the statement that the maximum age of a juvenile offender was to be determined by each State party in the light of the relevant social and cultural conditions was unnecessarily exclusive, since other important factors came into play.
57. Mr. ANDO suggested that the word "moreover" in the second to last sentence should be replaced by "however".

58. The CHAIRMAN said that the text would be amended accordingly, adding that the reference in the first sentence of the paragraph to juvenile offenders could also be usefully expanded, to say "juvenile accused persons and offenders".

59. Mr. HERNDL pointed out that the statement that the Covenant did not indicate the maximum age of a juvenile offender, which was to be determined by each State party, was inconsistent with the sentence that followed, which stated that in the Committee's view every person under the age of 18 should be treated as a juvenile offender.

60. Mr. ANDO suggested that that difficulty could be resolved by deleting the statement to the effect that each State party should determine the maximum age in the light of the relevant social and cultural conditions.

61. The CHAIRMAN said that if the sentence referred to by Mr. Ando was deleted, the next sentence could be reworded to read: "However, the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 be treated as a juvenile offender".

62. Ms. CHANET said that the Beijing Rules, also mentioned in the paragraph, emphasized the level of maturity of the minor. While social and cultural conditions were doubtless a factor, reference to them in the paragraph detracted from the focus under the Beijing Rules.

63. Mr. MAVROMMATIS said that his preference was to retain the sentence, but to redraft it to read as follows: "This is to be determined by each State party in the light of social, cultural and other relevant conditions".

64. The reference to the treatment of juvenile offenders should be recast to read: "... juvenile offenders shall be segregated from adults and be accorded treatment, in so far as conditions of detention are concerned, appropriate to their age and legal status ..."; alternatively the Committee should indicate what constituted appropriate conditions of detention.

65. Mr. ANDO suggested that that the relevant sentences should be reworded to read: "The Covenant does not indicate the maximum age of a juvenile offender. While the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 should be treated as a juvenile offender, this is to be determined by each State party in the light of social, cultural and other relevant conditions".

66. Mr. HERNDL said that the point the Committee was trying to make was that States should not set the maximum age lower than 18. He suggested that the paragraph should read: "The Covenant does not indicate the maximum age of a juvenile offender. While this is to be determined by each State party in the light of the relevant social and cultural conditions, the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 should be treated as a juvenile offender". Such a formulation would

(Mr. Herndl)

leave the matter to the discretion of States parties, while making the Committee's view quite clear.

67. The CHAIRMAN said he would take it that the Committee wished to accept the formulation proposed by Mr. Herndl.

68. Mr. MULLERSON suggested that the reference to treatment appropriate to the age of juvenile offenders could be expanded slightly by including examples of such treatment in so far as conditions of detention were concerned, such as shorter working hours and contacts with relatives.

69. The CHAIRMAN said that the sentence would be reworded to reflect the suggestions made by Mr. Mavrommatis and Mr. Müllerson. He proposed that, for purposes of consistency, the quotation marks in the second sentence of paragraph 15 should be deleted and the sentence rephrased accordingly.

70. Paragraph 15, as amended, was adopted.

71. The CHAIRMAN said that Rapporteurs had been selected to prepare drafts for final observations in respect of the periodic reports before the Committee. Mr. Ndiaye would deal with Algeria, Mr. Aguilar with Peru, Mr. Wennergren with Colombia, Mr. Ando with Belgium and Ms. Chanet with Yugoslavia.

The meeting rose at 6 p.m.